

PATENT  
Application No. 10/779,989  
Atty Dkt. No. STRR/0004.C1 - 7853.0006

### **REMARKS/ARGUMENTS**

This is intended as a full and complete response to the Office Action dated August 6, 2008, having a shortened statutory period for response set to expire on November 6, 2008, which period for response has been extended to February 6, 2008. Please reconsider the claims pending in the application for reasons discussed below.

Claims 35-45 have been rejected. All those claims have been amended, and new claims 46-63 have been added. No new matter has been added, and the language of the new claims are supported by the specification disclosure. Certain amendments were made to clarify the scope of the claims, making them more definite. Other amendments were made to establish or confirm patentability. The new claims are all dependent claims, which incorporate by reference all the limitations of claim 44, and recite additional limitations with respect to other specific embodiments. The applicant submits that claims 35-63 are patentable. Reconsideration of the pending claims is requested for reasons presented below.

#### **Claim Rejections – 35 U.S.C. § 112**

Claim 36 has been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that, in Claim 36, “the housing member sections” lacks positive antecedent basis. Accordingly, that claim has been amended to refer to “the elongated housing sections,” which has antecedent basis in claim 35. Withdrawal of the rejection is requested.

#### **Claim Rejections – 35 U.S.C. § 103**

Claims 35, 37-39 and 41-45 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp (US 4,942,966) in view of Bryson (US 4,610,394). Claim 36 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Bryson and further in view of Pehr (US 5,147,054). Claim 40 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Bryson and further in view of Carter (US 1,136,099).

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Applicant has amended the claims to further distinguish those claims from the cited prior art, and has also presented new claims that are dependent on claim 44. Applicant submits that the claims would not have been obvious over the above-referenced prior art.

All the claims recite an ampoule. That is, they all recite an ampoule opener "in combination with an ampoule." As amended, the claims now also recite additional structure for the ampoule, i.e., that it must have a lower liquid portion containing liquid and an upper tip portion that is narrower in diameter than the lower liquid portion, and further having a neck portion disposed between the lower liquid portion and the upper tip portion. None of the cited references discloses or suggests ampoules, nor do they disclose or suggest using the structures disclosed in those references for opening (aka "breaking") ampoules.

For example, the primary reference relied on in the Office Action is the Kemp patent. That patent discloses a containment device for a test tube. A test tube is not an ampoule nor does it have the structural features of the ampoule as now recited in the amended claims. The test tube does not have a narrow neck portion, for example. Thus, it is incorrect to conclude that "Kemp discloses the invention as substantially claimed except for a first housing section being hingedly connected to a second housing section and at least one latch securing the housing sections." At the very least, Kemp fails to disclose or suggest an ampoule.

The Examiner has argued that it would have been obvious to modify the Kemp device to provide two hingedly connected housing sections with latch as taught by Bryson in order to facilitate loading of a package. First, as noted above, Bryson does not disclose an ampoule, so the combination of Kemp and Bryson does not render the claims obvious. Furthermore, Applicant submits it would not have been obvious to modify Kemp using the teachings of Bryson. Bryson and Kemp have entirely different purposes, which are unrelated. Kemp discloses a device for storing a test tube, and that device can be opened and closed via the lid in the opening. Changing the unitary structure in Kemp to a two-section structure would not facilitate loading of the test tube. Indeed, it would interfere with the effectiveness of the Kemp device, since an important feature of Kemp is the narrower lower portion as compared to the wider upper portion; thus, a test tube can be placed axially into the container, so that the lower

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part of the test tube is held or gripped by the walls of the device. (See, for example, Figure 3 of Kemp). Having two sections would not further that objective and could in fact tend to hinder it.

In contrast, Bryson is a molded dispensing container, which is designed to enclose a package containing a substance to be dispensed, such as deodorant or insecticide. (Figure 1 and Col. 2, lines 32-38.) Whereas the Kemp device has a lid that can be opened and shut, and a test tube can be easily placed into the Kemp device for later removal, the package in Bryson is placed into the interior of the dispensing container and then sealed. For example, Bryson states that the sidewall and upper and lower closure members "are fabricated such that, after assembly, the container 11 cannot be readily disassembled without rupture or breakage of one or more of the container components. Thus, not only are the purposes of Kemp and Bryson totally different, but replacing the unitary Kemp structure with the two-section Bryson structure would make the Kemp device unworkable for its intended purpose. Therefore, using the teachings of Bryson to modify Kemp would not be obvious.

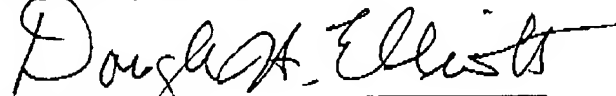
Furthermore, neither Kemp nor Bryson discloses "at least one inner rib circumscribing at least a portion of the inner housing surface proximate the open housing end," as recited in claim 35 (as amended). Neither Kemp nor Bryson disclose or suggest an inner ridge. Also, whereas Bryson discloses a latch 103, 107, that latch does not secure the lid in the closed position. Rather, the latch in Bryson appears to be used to connect the two half cylinders together. Claim 43 has two latches, and there is no disclosure of two latches in Bryson.

Furthermore, in view of the differences between claim 35 and the prior art, modifying Kemp and/or Bryson with Pehr or Carter does not render obvious the subject matter of claims 36 or 40.

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Having addressed all issues set out in the office action, Applicant respectfully submits that the claims are in condition for allowance and respectfully requests that the claims be allowed.

Respectfully submitted,



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